



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 902

[SATS No. AK-009-FOR; Docket ID: OSM-2022-0007; S1D1S

S08011000SX064A000 222S180110; S2D2S SS08011000 SX064A000 22XS501520]

#### Alaska Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the Alaska program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to Valid Existing Rights. Alaska intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency. This document gives the times and locations that the Alaska program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., MDT [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4 p.m., MDT on [Insert date 15 days after date of publication in the

FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by SATS No. AK-009-FOR, by any of the following methods:

Mail/Hand Delivery: OSMRE, Attn: Howard Strand, Denver Field Branch Manager; Office of Surface Mining Reclamation and Enforcement; One Denver Federal Center, Building 41, P.O. Box 25065, Lakewood, Colorado 80225-0065.

Fax: 303-236-6056. Federal eRulemaking Portal: The amendment has been assigned Docket ID: OSM-2022-0007. If you would like to submit comments go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the ones listed above will be included in the docket for this rulemaking and considered.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Alaska program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Denver Field Office or the full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov).

Attn: Howard Strand, Denver Field Branch Manager

Office of Surface Mining Reclamation and Enforcement

One Denver Federal Center - Building 41

Lakewood, Colorado 80225-0065

Telephone: (303) 236-2931

E-mail: [hstrand@osmre.gov](mailto:hstrand@osmre.gov)

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Russell Kirkham, Alaska Coal Regulatory Program Manager

Division of Mining, Land and Water

Department of Natural Resources

550 West 7th Avenue, Suite 900D

Anchorage, Alaska 99501-3577

Telephone: (907)-269-8650

E-mail: [russell.kirkham@alaska.gov](mailto:russell.kirkham@alaska.gov)

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, PO Box 11018, 100 East B Street Casper, Wyoming 82601-1018. Telephone: (307) 261-6550. E-mail: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Alaska Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**Background on the Alaska Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among

other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Alaska program on May 2, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, Federal Register (48 FR 12274). You can also find later actions concerning the program and program amendments at 30 CFR 902.10.

#### Description of the Proposed Amendment

By letter dated June 27, 2022 (Administrative Record No. OSM-2022-0019-001), Alaska sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). OSMRE received the amendment on June 28, 2022 and found it administratively complete on June 29, 2022.

Alaska submitted the amendment to implement the required changes identified in OSMRE's April 2, 2001 and February 4, 2008 letters and conform with the State of Alaska "Drafting Manual for Administrative Regulation." The amendment proposes to change the Alaska Administrative Code by revising and adding provisions pertaining to Valid Existing Rights. Specifically, Alaska proposes to add a definition of "valid existing rights," changes to areas where mining may be limited or occurs in an area designated unsuitable for surface coal mining, and to formalize the process to request valid existing rights. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at [www.regulations.gov](http://www.regulations.gov).

#### Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

## Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

## Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

#### IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—  
Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

#### Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our

regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

#### **List of Subjects in 30 CFR Part 902**

State regulatory program approval, State-federal cooperative agreement, required program amendments.

David A. Berry,

Regional Director, Unified Regions 5, 7-11.

[FR Doc. 2023-10491 Filed: 5/18/2023 8:45 am; Publication Date: 5/19/2023]